THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.12448 OF 1996

Dated 28-11-2006

Between:

Sri Veerabhadreswara Weavers
Co-Operative Production & Sale
Society Limited …Petitioner

And

The II-Appellate Authority under
Sec.48(3) of A.P.S.E.Act, 1988 &
Dy.Commissioner of Labour, Eluru
And two others …Respondents

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O R D E R:

This writ petition is filed seeking a Certiorari calling for records relating to the proceedings in Case No.1/1995, dated 30-11-1995, on the file of the Second Appellate Authority under Andhra Pradesh Shops and Establishments Act-cum-Deputy Commissioner of Labour, Eluru, and to quash the same as arbitrary and illegal.

The case of the petitioner is that it is a Weavers' Cooperative Production & Sales Society Limited engaged in manufacturing of handloom cloths. It was established in the year 1947 and is registered as a Cooperative Society under the provisions of the Andhra Pradesh Cooperative Societies Act (for short "the Act"). The main object of the petitioner-Society is to provide work to the weavers who are enrolled as members of the Society. It procures yarn from the Andhra Pradesh State Handloom Weavers Cooperative Society (APCO) and after converting the yarn into cloth the same would be supplied to APCO. The Society has on its rolls some staff, who look after the administration and accounts. The third respondent-employee was one among them and was appointed as a Production Clerk by the Society in 1965. The service conditions of the third respondent are covered by the byelaws of the Society and Andhra Pradesh Cooperative Societies Rules (for short "the Rules"). So far as the age of superannuation is concerned Rule 28(5) of the Rules is applicable. According to the said Rule, every paid servant or officer of a Society except those who are in the last grade shall retire on attaining the age

of 58 years. The petitioner-Society invoking the said Rule, intimated the third respondent that he should retire on 16-08-1993 on attaining the age of 58 years. According to the petitioner, the third respondent misconstruing the order of retirement dated 16-08-1993 as termination order and filed an appeal under Section 48 of the Andhra Pradesh Shops and Establishments Act, 1988 (for short "the 1988 Act") before the second respondent-Assistant Commissioner of Labour on the ground that his date of birth should be taken as 03-01-1936 as per the school certificate instead of 04-12-1941 as contended by the Society. The second respondent disposed of the appeal holding that the date of birth of the third respondent should be taken as 03-01-1936 as per the school certificate, however, it held that the third respondent should retire from service on attaining the age of 58 years. Aggrieved by the same, the third respondent preferred an appeal before the Second Appellate Authority-the first respondent stating that as per Section 47 of the 1988 Act, he is entitled to continue up to 60 years and Rule 28(5) of the Rules is not applicable to him. The first respondent held that the third respondent is entitled to continue up to 60 years as per the provisions of Section 47 of the 1988 Act. Aggrieved by the same, the petitioner-Society has preferred the present writ petition.

The only contention of the learned counsel for the petitioner-Society is that the third respondent is governed by the Rules made under the Act and as per Rule 28(5), the age of superannuation of an employee of a Cooperative Society is only 58 years, therefore, the third respondent is not entitled to continue up to 60 years as held by the appellate authority basing on Section 47 of the 1988 Act. In this regard, the learned counsel has placed reliance on the judgment reported in ***V.Gopalakrishnaiah vs.District Cooperative Central Bank***[1]***,*** wherein it was held that the provisions of the Andhra

Pradesh Shops and Establishments Act, 1988 do not give any right to the employees working in the respondent-Bank to continue in service up to the age of 60 years, since the statutory Rules provided under the Andhra Pradesh Cooperative Societies Act, 1964, which govern the service conditions of the petitioners, envisage the age of retirement of an employee working in the respondent-bank at the age of 58 years. He also placed reliance on ***President, Buchireddipalem Co-Operative Rural Bank Limited vs. D.Siva Subrahmanyam*** [2], wherein it was held that the statutory Rules themselves prescribe the age of superannuation for an employee working in a Cooperative Society as 58 years.

There cannot be any dispute as to the proposition laid down in these decisions. But the employees therein, were working in District Cooperative Central Bank, and Cooperative Rural Bank respectively and they are governed by the Statutory Rules made under the Act in consonance with Section 116 (c) of the Act or Section 72(3) of the Act. The learned counsel for the petitioner, however, fairly conceded that there are no statutory Rules governing the service conditions of the employees of the petitioner-Society. Though he states that the service conditions of the third respondent are governed by the byelaws of the Society, the same are not statutory as admitted by the petitioner. In view of the above, I am of the opinion that the judgments cited by the learned counsel for the petitioner has no relevance to the facts of this case.

Explanation (2) to Section 47 of the 1988 Act reads as under:

> *"An employee who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a Registered Medical Practitioner or who wants to retire on medical grounds or to resign his service, may give up his*

employment after giving to his employer notice of at least fifteen days and where no such notice is given, the service compensation payable to him shall be forfeited to the extent of fifteen days in lieu of the notice"

This explanation to Section 47 of the 1988 Act contemplates that an employee shall continue up to the age of 60 years. Further Section 77 of the 1988 Act reads as under-

*"**Application of this Act to Cooperative Societies:-** Notwithstanding anything in the Andhra Pradesh Cooperative Societies Act, 1964, the provisions of this Act shall apply to the Cooperative Societies."*

Thus, it is very clear that notwithstanding anything in the Act and Rules of 1964, the provisions of the 1988 Act shall apply to the Cooperative Societies. Therefore, it must be construed that wherever the service conditions of employees of a Society are not governed by the statutory Rules, Section 77 of the 1988 Act has full force and application. Hence, it must be deemed that an employee of a Society of this nature is entitled to continue in service up to the age of 60 years.

In view of the above, the writ petition is devoid of merits. The same is liable to be dismissed and is accordingly dismissed. No order as to costs.

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(C.V.Ramulu,J)

Dated 28th November, 2006

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[1] 1998(5) ALT 668 (D.B)

[2] 1997(3) ALT 724 (D.B)